

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

FACT SHEET #4

ROLES AND RESPONSIBILITIES OF THE ALTERNATIVE DISPUTE RESOLUTION (ADR) NEUTRAL/EVALUATOR

MAY A NEUTRAL SERVE AS COUNSEL? Any member of the bar of this Court who is certified as a neutral will not for that reason be disqualified from appearing as counsel in any other case pending before the Court.

WHAT IS THE ROLE OF THE MEDIATOR? The mediator presents a broad range of resolution options to the parties by exploring the litigants' needs and interests that may be independent of the legal issues in controversy. The neutral may request or accept additional confidential statements that are not shared with the other side and are not filed with the Court. The neutral helps parties engage in productive dialogue, helps each party understand the other side's views and interests, and communicates views or proposals in more palpable terms. The neutral also gauges the receptiveness of proposals, helps parties realistically assess their alternatives, and helps generate creative solutions.

WHAT FALLS OUTSIDE THE ROLE OF THE MEDIATOR? The mediator generally does not give an overall evaluation of the case. The mediator has no power to impose settlement or coerce a party to accept proposed terms. The mediator does not make a decision for the parties.

WHAT IS THE ROLE OF THE EVALUATOR? The evaluator enables parties to communicate directly about their claims and supporting evidence, provides an assessment of the merits of the case, provides a "reality check" for clients and lawyers, identifies and clarifies the central issues in dispute, assists with discovery and motion planning or with an informal exchange of key information, and facilitate settlement discussions, when requested by the parties.

WHAT FALLS OUTSIDE THE ROLE OF THE? The evaluator has no power to impose settlement or coerce a party to accept any proposed terms.

WHAT ARE THE QUALIFICATIONS FOR A NEUTRAL? Neutrals on the Court's panel have the following qualifications: admission to the practice of law for at least 5 years, experience in communication and negotiation techniques, knowledge about civil litigation in federal and state court, 16 hours of training by the court or other training organization.

WHAT IS THE NEUTRAL'S ROLE IN REPORTING GOOD FAITH PARTICIPATION? The neutral will report to the judge any willful or negligent failure to attend any ADR conference, to substantially comply with the Order Referring Case to Alternative Dispute Resolution, or otherwise participate in the ADR process in good faith.

WHAT IS THE LENGTH OF A NEUTRAL'S APPOINTMENT? The appointment of a neutral shall be effective until the neutral notifies the Court in writing that the referral has been concluded.

CAN A NEUTRAL BE DISQUALIFIED? A neutral may be disqualified for bias or prejudice pursuant to 28 U.S.C. §144, and shall be disqualified in any case in which a justice, judge, or magistrate judge would be disqualified pursuant to 28 U.S.C. §455. Any party who believes that an assigned neutral has a conflict of interest shall file a motion for disqualification of the neutral at the earliest opportunity,

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or waive the objection.

WHAT HAPPENS IS A NEUTRAL CANNOT SERVE HIS OR HER TERM? A neutral who cannot serve within the period of referral shall notify lead counsel who will arrange for selection of a different neutral by agreement of the parties or by the Clerk.

WHAT IS THE RESPONSIBILITY OF THE NEUTRAL IN FILING A COMPLIANCE REPORT? Within 14 days after the ADR referral is concluded, the neutral shall file with the Court an Alternative Dispute Resolution Compliance Report on a form provided by the Clerk.

CAN THE NEUTRAL COMMUNICATE PRIVATELY AND EX PARTE WITH COUNSEL AND UNREPRESENTED PARTIES? The neutral designated in a case may communicate privately and ex parte with counsel and unrepresented parties prior to the commencement of the formal dispute resolution process.